

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
*Norfolk Division***

UNITED STATES OF AMERICA,)	
)	
v.)	CRIMINAL NO. 2:23CR126
)	
JOSHUA LEE RAY,)	
)	
Defendant.)	

MOTION TO CONTINUE TRIAL

Comes Now, the United States of America, through the undersigned counsel, and respectfully moves this Honorable Court for a continuance of the trial set to begin on January 16, 2024, to a date convenient with the Court and counsel due to the discovery of new evidence and the need to effectively prepare for trial. In support of this motion, the government represents as follows:

1. On October 25, 2023, defendant JOSHUA LEE RAY (defendant or RAY) was arrested for three counts of Aggravated Sexual Abuse with Children, in violation of 18 U.S.C. § 2241(c), Possession of Child Pornography, in violation of 18 U.S.C. § 2252(a)(4)(A), and one count of Destruction, Alteration, and Falsification of Records, in violation of 18 U.S.C. § 1519. ECF No. 19. The trial was set to begin on January 8, 2024, which was within the speedy trial calculation. ECF No. 25.
2. On November 9, 2023, defendant filed two motions, one of which is still pending at the time of this filing. ECF Nos. 26, 27.
3. On December 20, 2023, the Court rescheduled the trial to begin on January 16, 2024.

4. During the various searches of defendant's residence, vehicle, berthing area, and cellular phones, law enforcement seized numerous electronic media. Despite diligent efforts, the forensic examination of some of these items is ongoing.

5. On December 21, 2023, the government discovered previously unknown evidence on one of RAY's electronic devices. The new evidence makes it necessary to supersede the pending indictment. The earliest grand jury date in Norfolk is January 10, 2024, which is when the government plans to present the superseding indictment.

6. The Speedy Trial Act, 18 U.S.C. § 3161(c)(1), requires that the trial of a defendant charged in an indictment occur within 70 days from the later of the filing of the indictment or the date on which the defendant appeared before a judicial officer in the court in which the indictment is pending.

7. As mentioned, the government has been diligent in its preparation for trial. However, the newly discovered evidence necessitates the need for more time within which to effectively prepare for trial. As such, the government requests the January 16, 2024, trial in this matter be continued.

8. Importantly, however, the government's case agent, an essential witness for the trial, is pregnant and due to have the baby at the end of January 2024. Barring unforeseen consequences, the government expects the case agent to be available for trial at some point in May 2024.

9. Due to the unavailability of an essential witness and the need to effectively prepare for trial, should the Court grant the motion to continue the trial, the government requests that the trial be set outside the speedy trial window because the ends of justice served by taking

such action outweigh the best interest of the public and the defendant in a speedy trial. 18 U.S.C. §§ 3161(h)(3)(A), (h)(7)(A), (h)(7)(B)(iv).

10. The government consulted with defendant's counsel about this motion to continue the trial. While they agree a continuance is necessary due to the newly discovered evidence and the upcoming superseding indictment, the defendant does not agree to waive his rights to a speedy trial.

WHEREFORE, the United States respectfully requests a continuance of the trial date scheduled to begin on January 16, 2024, to a date agreeable to the Court and the parties.

Respectfully submitted,

JESSICA D. ABER
UNITED STATES ATTORNEY

By: /s/
Elizabeth M. Yusi
Megan M. Montoya
Assistant United States Attorneys
Attorney for the United States
United States Attorney's Office
101 West Main Street, Suite 8000
Norfolk, Virginia 23510
Office Number: 757-441-6331
Facsimile Number: 757-441-6689
E-Mail: elizabeth.yusi@usdoj.gov

CERTIFICATE OF SERVICE

I certify that on this 22nd day of December, 2023, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send a notification of such filing (NEF) to all counsel of record.

_____/s/
Elizabeth M. Yusi
Assistant United States Attorney